THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20183 of 1999

Dated:10.10.2007

Between

R.Ananthaiah

..Petitioner

and

1.The Labour Court-III, rep.,by its Presiding Officer, Hyderabad and another.

…Respondent

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.20183 of 1999

ORDER:

This writ petition is filed challenging the award made in I.D.No.88 of 1995 on the file of the Labour Court-III, Hyderabad denying grant of other reliefs such as attendant benefits and back-wages while directing fresh appointment of the petitioner into service.

The petitioner is the workman and the second respondent is the Corporation. It appears that in view of the petitioner's absenteeism from duty for 80 days during 1992, after framing charges, a detailed enquiry was conducted and he was removed from service on 24.11.1992. Aggrieved by the same, he filed a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 (for

short ‘the Act’) before the Labour Court-III, Hyderabad stating that he was sick for 86 days and the same was supported by the proceedings under Ex.M6, therefore, the question of absenting himself from duties without any reasonable cause does not arise. Even otherwise, it is contended that the enquiry was not properly conducted and the punishment of removal from service is disproportionate to that of the misconduct alleged.

A detailed counter-affidavit has been filed by the respondent-Corporation denying the allegations made by the petitioner. It is stated that initially the petitioner was appointed as a casual conductor vide order dated 29.5.1986. Subsequently with effect from 16.2.1987 he was appointed as a temporary conductor and was removed from service with effect from 10.11.1991 on the ground of absenteeism. The petitioner has not given the details of his absenteeism and his admission in the RTC

hospital. The Medical Officer of the Corporation reported that the petitioner having reported for treatment had abstained himself and addressed a letter to the second respondent about his absence. Basing on the said letter, a charge sheet was issued to the petitioner on 6.2.1992 for having remained absent from 8.11.1991 without prior intimation or permission. Though the petitioner submitted his explanation, the same was found to be unsatisfactory and an enquiry was ordered and reasonable opportunity was given to him. The Enquiry Officer found the petitioner guilty of the charges levelled and consequently, the impugned order of removal of petitioner from service was passed by the second respondent. No illegality has been committed by the second respondent-Corporation calling for interference with the order of removal.

No oral or documentary evidence was adduced by either party. However, on behalf

of the respondent-Corporation Exs.M1 to M11 were marked.

After a detailed consideration of the record, the labour Court came to the conclusion that the charges framed against the petitioner were proved and he was absent unauthorizedly for a period of more than six months causing inconvenience to the travelling public besides loss of revenue to the Corporation and it resulted in cancellation of services. Though the petitioner has not complied with the mandatory provisions of the Regulations, the medical certificate submitted by him goes to prove that he was sick as he was suffering from Jaundice. The Labour Court while taking the services of the petitioner into consideration, found that the punishment of removal from service is too harsh and the same is not proportionate to the misconduct committed by the petitioner and as such directed reinstatement of the petitioner into service as a fresh conductor without back

wages and attendant benefits. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner submitted that the petitioner absented himself from duty for 86 days. But the Labour Court while holding that the said removal is disproportionate, ought not to have denied six years of service rendered by the petitioner and it will have greater impact on his future promotions etc.

Whereas learned Standing Counsel for the respondent-Corporation strenuously contended that the Labour Court itself was very lenient in passing the Award as it directed the second respondent-Corporation to reinstate the petitioner into service afresh and denied further reliefs. Therefore, no interference can be made with the award passed by the labour Court.

I am in full agreement with the submission made by the learned standing counsel for the respondent-Corporatiion that the labour Court

itself has taken a lenient view of the matter. It is true that a person, who has committed some mistake, could not be allowed to take advantage of such situation and get seniority over others who are working in the Corporation. However, I am of the opinion that while directing reinstatement, the Labour Court ought not to have denied the continuity of service atleast for the purpose of retiral benefits etc. Under those circumstances, I deem it appropriate to modify the award passed by the Labour Court to be read as under:

"The petitioner is entitled for fresh appointment and the service rendered by him from the date of his initial appointment till the date of reinstatement shall be reckoned only for the purpose of terminal benefits. The said service shall not be counted for any other purpose such as seniority, promotion etc."

With the above modification, the writ petition is disposed of. No costs.

10-10-2007

rkk